

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

FILED
2009 SEP 30 P 3 46

STEVEN P. STEWART,

Plaintiff,

vs.

THYSSENKRUPP WAUPACA, INC.,
THYSSENKRUPP WAUPACA GROUP
BENEFITS PLAN,

and

SUN LIFE FINANCIAL ASSURANCE
COMPANY OF CANADA,

Defendants

U.S. DISTRICT COURT
EASTERN DIST. TENN.

Case No.

BY _____ DEPT. CLERK

Removed from McMinn County

Case No. 28423

1:09-cv-260

CLC / Lee

NOTICE OF REMOVAL

TO: Eric Buchanan
Eric Buchanan & Associates, PLLC
414 McCallie Avenue
Chattanooga, Tennessee 37402
(Attorney for Plaintiff)

Patricia L. McNutt
Clerk of the United States District Court
Eastern District of Tennessee
900 Georgia Avenue
Chattanooga, Tennessee 37402

Rhonda Cooley
Clerk of McMinn County Circuit Court
Circuit Court Clerk
McMinn County Courthouse
6 East Madison Avenue
Athens, TN 37303

PLEASE TAKE NOTICE that Defendants, ThyssenKrupp Waupaca, Inc. and ThyssenKrupp Waupaca Group Benefits Plan (“Waupaca”), by its attorneys Michael Best & Friedrich LLP, and Carter, Harrod & Willhite, PLLC, and Defendant, Sun Life Financial Assurance Company of Canada (“Sun Life”) (collectively, “Defendants”), by its attorneys Miller & Martin PLLC, pursuant to 28 U.S.C. §§ 1331, 1332, 1441 and 1446, hereby remove to the United States District Court for the Eastern District of Tennessee, the action captioned *Steven P. Stewart v. ThyssenKrupp Waupaca, Inc., ThyssenKrupp Waupaca Group Benefits Plan, and Sun Life Financial Assurance Company of Canada*, which is pending in the Circuit Court of McMinn County, Tennessee, as Case No.28423 (“State Court Action”).

THE PARTIES

1. Defendant, ThyssenKrupp Waupaca, Inc, is incorporated in Wisconsin with its principal place of business located at 1955 Brunner Drive, P.O. Box 249, Waupaca, Wisconsin 54981.
2. Defendant, ThyssenKrupp Waupaca Group Benefits Plan is the benefits plan administered by ThyssenKrupp Waupaca, Inc.
3. Defendant, Sun Life Financial Assurance Company of Canada is a Canadian Corporation with its principal place of business in Toronto, Ontario, Canada.
4. According to the Complaint in the above-referenced action, plaintiff, Steven P. Stewart, at all times relevant hereto, was and is an adult resident of Bradley County, Tennessee. *See Complaint ¶ 1.* A true and correct copy of the Summons and Complaint in the State Court Action is attached hereto and marked as **Exhibit A.**

TIMELINESS OF REMOVAL

5. The above-captioned action was commenced on August 27, 2009, in McMinn County Circuit Court. See **Exhibit A**.

6. Defendant Waupaca was served on September 2, 2009. On September 14, 2009, Plaintiffs filed a return of service in the state court action stating that “Sun Life Financial Assurance” was served through the Tennessee Department of commerce and Insurance on September 2, 2009.

7. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) and Rule 6(a) of the Federal Rules of Civil Procedure, in that it was filed within 30 days after Defendants were served with a copy of the Complaint in the State Court Action.

8. Filed herewith are copies of the pleadings and process transmittals served on petitioning Defendants. See **Exhibit A**; see also process transmittal filed and attached hereto as **Exhibit B**.

REMOVAL JURISDICTION, VENUE, AND DEFENSES

9. The Complaint in the State Court Action involves an amount in controversy between Plaintiff and Defendants that exceeds the sum of \$75,000.00. Plaintiff seeks 23 months (100 weeks) of benefits at a rate of \$500.00 per week. **Exhibit A** ¶ 35. This sum of \$50,000.00, in addition to Plaintiff’s demand for a 25% increase as a penalty, as well as punitive damages, meets and exceeds the jurisdictional requirement of \$75,000.00. By reason thereof and because of the diversity of Plaintiff and Defendants, this Court has original jurisdiction of this case pursuant to 28 U.S.C. §§ 1332.

10. This Court has original jurisdiction over the instant suit pursuant to the provisions of 28 U.S.C. §1331 and the Employee Retirement Income Retirement Security Act (“ERISA”),

29 U.S.C. §1001, *et seq.* Notwithstanding Plaintiff's attempts to characterize this action as a state law claim for breach of contract, bad faith, and negligence, the matter is removable because the claims asserted against Defendants seek benefits under an employee welfare benefit plan, as that term is defined at 29 U.S.C. §1002(1).

11. Specifically, Plaintiff seeks benefits allegedly due under an employee benefit plan maintained by Defendants. The employee benefit plan consists of two components: (i) a short-term disability benefit providing benefits for disabilities of up to six (6) months, administered by Sun Life but paid by ThyssenKrupp Waupaca, Inc., described in the plan booklet entitled "ThyssenKrupp Waupaca, Inc. Short Term Disability Plan," attached hereto as **Exhibit C**; and (ii) a long-term disability benefit providing benefits for disabilities of longer than 6 months, insured, administered and paid by Sun Life, described in the plan booklet entitled "ThyssenKrupp Waupaca, Inc. Long Term Disability Insurance," attached here to as **Exhibit D**. The two disability benefit components are viewed by ThyssenKrupp Waupaca, Inc. as a coordinated single disability benefit plan. As established by Exhibits C and D, the benefit plan has coordinated decision-making by Defendant Sun Life as to disability benefit entitlements, coordination between short-term and long-term absences due to a single disability, and other coordinated aspects of the two components of the benefit plan.

12. That the single coordinated nature of the disability program was also recognized by employees, including Plaintiff, is revealed by the fact that Plaintiff alleges that the Defendants refused to pay plan benefits under a single disability plan. Plaintiff seeks to recover, among other things, past benefits allegedly due, and punitive and exemplary damages. See **Exhibit A** ¶¶ 30-59. Plaintiff seeks both short-term and long-term disability benefits. See **Exhibit A** ¶¶ 18, 25, in which Plaintiff seeks benefits of 23 months, thereby seeking benefits under both the short-term

disability plan component and the long-term disability plan component, which is insured by Sun Life.

13. Regardless of whether the benefits sought by Plaintiff are viewed as being provided under a single disability benefit plan or two separate disability benefit plans, because some or all of Plaintiff's claims arise out of and seek benefits under the terms of an employee welfare benefit plan governed by the provisions of ERISA, Plaintiff's state law claims are preempted by ERISA. *See McMahon v. Digital Equipment Corporation*, 162 F.3d 28, 35-36 (1st Cir. 1998) (holding that ERISA preempted claims seeking benefits from employee welfare benefit plans as defined and governed by ERISA).

12. Venue is proper in the Eastern District of Tennessee pursuant to 28 U.S.C. §1391(b) and 29 U.S.C. §1132(e)(2), in that a substantial part of the events giving rise to the alleged claim occurred in the Eastern District of Tennessee and the county in which the state action was pending is found within this District.

13. The removal of this action to the Eastern District of Tennessee does not waive the Defendants' ability to assert any defense in this action.

14. Plaintiff's Complaint is the initial pleading setting forth the claim upon which the action is based, and no further proceedings have been held herein.

15. Defendants have filed a Notice and true and correct copy this Notice of Removal with the McMinn County Circuit Court. A copy of said Notice is attached hereto as **Exhibit E**.

WHEREFORE, Defendants have removed this action to the United States District Court for the Eastern District of Tennessee, in accordance with the statutes and pleadings made and provided.

Dated this 30th day of September, 2009

MICHAEL BEST & FRIEDRICH LLP

By: Melissa H. Burkland by B.J. Willhite
Charles P. Stevens, WBN 1014720 *via email*
authorization
cpstevens@michaelbest.com
Mitchell W. Quick, WBN 1001493
mwquick@michaelbest.com
Melissa H. Burkland, WBN 1071443
mhbukland@michaelbest.com
100 East Wisconsin Avenue
Suite 3300
Milwaukee, WI 53202-4108
Telephone: (414) 271-6560
Facsimile: (414) 277-0656

Attorneys for Defendants Thyssenkrupp
Waupaca, Inc. and Thyssenkrupp Waupaca
Group Benefits Plan

MILLER & MARTIN PLLC

By: James T. Williams by B.J. Willhite
James T. Williams, BPR # 016341 *via telephone*
authorization
jwilliams@millermartin.com
Suite 1000 Volunteer Bldg.
832 Georgia Avenue
Chattanooga, TN 37402
Phone (423) 785-8244
Fax (423) 321-1576

Attorney for Defendant Sun Life Financial
Assurance Company of Canada

CARTER, HARROD & WILLHITE, PLLC

By: B.J. Willhite
Bridget J. Willhite, BPR # 021951
bridget@Harrodlawfirm.com
1 East Madison Ave.
P.O. Box 885
Athens, TN 37371--0885
Phone (423) 745-7447
Fax (423) 745-6114

Attorney for Defendants Thyssenkrupp
Waupaca, Inc. and Thyssenkrupp Waupaca
Group Benefits Plan